



April 8, 2009

Via ECFS

Marlene Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street NW  
Washington, DC 20554

RE: Notice of Ex parte, WC Docket 07-135

Dear Ms. Dortch,

David Frankel, CEO of ZipDX LLC met with the following members of the Wireline Competition Bureau via (paid) teleconference on April 8, 2009:

- Al Lewis, Deena Shetler, Doug Slotten, Jay Atkinson, Lynne Engledow, and John Hunter.

The discussions focused on the attached materials. Mr. Frankel stressed that the abuse of rural access charges has been allowed to linger for far too long. The proposed rule clarifications should be non-controversial for any legitimate player not attempting to game the system. The Commission is obligated to address this promptly.

Regards,

/s/  
David Frankel  
CEO, ZipDX LLC  
Los Gatos, California  
1-800-372-6535 / dfrankel@zipdx.com

cc: Participants, via E-mail



# The Problem

- ZipDX is a conferencing service provider; we charge our end-users for the services that they use.
- A small group is “gaming the system” – using access charges to subsidize other services. They offer conference calling (and/or international calling, chat, etc.) for “free.”
- The presence of these “free” services distorts the market.
- End-users are being “taught” that these services can be “free.” But in fact they are not free, and this model is not sustainable.
- ZipDX complained to the FCC a year ago, asking that you either validate this arbitrage scheme, so that we can all use it, or you cut it off.
- The FCC has indicated that the arbitrage isn’t “right” but it hasn’t acted to stop it.
- Marketplace damage continues thanks to your inaction.



# Introduction

- “Traffic Pumping” has been a significant issue for several years and continues to grow.
- Qwest has highlighted that this is a violation of Section 254(k) – traffic pumpers are using their monopoly access position to subsidize what should be competitive services (such as conference calling).
- Legitimate providers (including small entities such as ZipDX) are being harmed; our only alternative at present to level the playing field is to become (or collude with) a Rural (C)LEC in similar violation.
- A few perpetrators are being permitted to distort the entire system.
- FCC Commissioners, busy with higher priorities, need to delegate this matter to Bureau staff for prompt, definitive resolution.
- We are proposing a fair and reasonable approach that allows Rural (C)LECs to continue to collect appropriate access charges while halting the regulatory arbitrage undertaken by the traffic pumpers.



## Background

- Access charges allow carriers to recover some of their costs to connect their subscribers to the Public Switched Telephone Network.
- Rural carriers need to charge higher rates because of their low-density networks and small volume.
- A few enterprising “rural” carriers (including “competitive” carriers) have deployed applications that drive traffic onto their network, allowing them to collect large sums in access charges.
- FCC has made clear that this “traffic pumping” is not an appropriate use of access charges, but has not promulgated rules to address it.
- Our proposed solution follows. Since carriers were long ago put on notice that arbitrage via traffic pumping is not appropriate, these rules can be put in place immediately.



## Summary

# **Rural Access Charges are for Access to Rural End-Users.**

**RBOC access charges apply in other cases  
(where access charges are applicable).**



## Allowable use of Rural Access Charges

- Rural Access Charges shall apply when serving end-users in the rural LEC's geographical footprint
- The “geographical footprint” (or “territory”) of a LEC is the set of physical locations where the LEC has deployed facilities to connect the end-user's premises to the LEC's captive network equipment
- Normally the end-users are the LEC's consumer and business (human) customers in its operating territory
- When these customers make and receive long-distance calls, the LEC is entitled to collect filed rural access charges from the Inter-Exchange Carrier (IXC)
- If the Rural LEC's customer is itself a communications service provider, the “end user” is that provider's customer.



## Rural Access Charges NOT Applicable:

- When a calling service is offered such that none of the parties in the call are end-users in the geographical footprint of the rural LEC, the LEC is NOT entitled to Rural Access Charges for that service
- This includes applications and services that terminate or originate one PSTN phone call, and then use additional means to relay the contents of that call elsewhere
- This restriction applies to “relaying”:
  - Via one or more other PSTN phone calls, and/or
  - Via the Internet or some other network or point-to-point link, and
  - In real time or in a store-and-forward mode, and
  - Regardless of transmission format (TDM voice, packet voice, packet data, fax, modem, Morse code, etc.)
- Access charges (if any) for calls of this nature must be at RBOC benchmark rates



## RBOC Access Rates Apply to:

- Chat Lines
- Conference calling
- Call Forwarding, including
  - International forwarding
  - “Find me” services
- Call Recording
- Voice-mail
- Fax mailbox
- Any other service offered without regard to the physical location of any of the end-user(s) involved.
- The “end user” in these situations is the actual end-user enjoying the service, NOT intermediate entities involved in providing and marketing the service.





## Rural Access Charge Examples

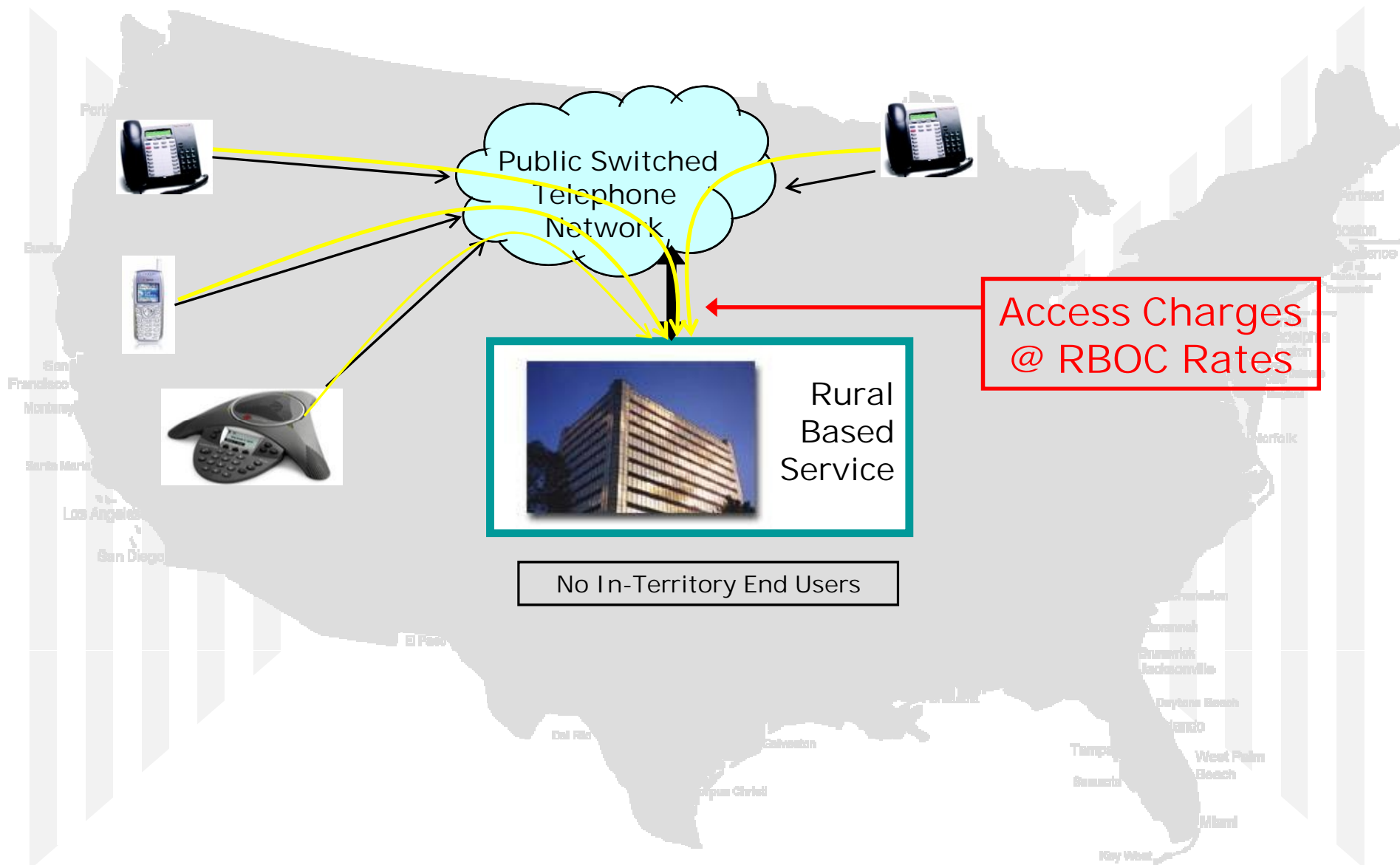
- Rural Access Charges are applicable when use is incidental to a permissible service, such as:
  - Single-line call-forwarding service offered to a consumer residing in the LEC's territory
  - In-territory business customer supplying fax mailboxes for remote employees or operating a conference bridge for their own use
  - Wireless roaming for a mobile subscriber normally resident in-territory
- Rural access charges apply to traffic to and from a call center with a majority of (human) agents located in-territory



# Identifying & Preventing Violations

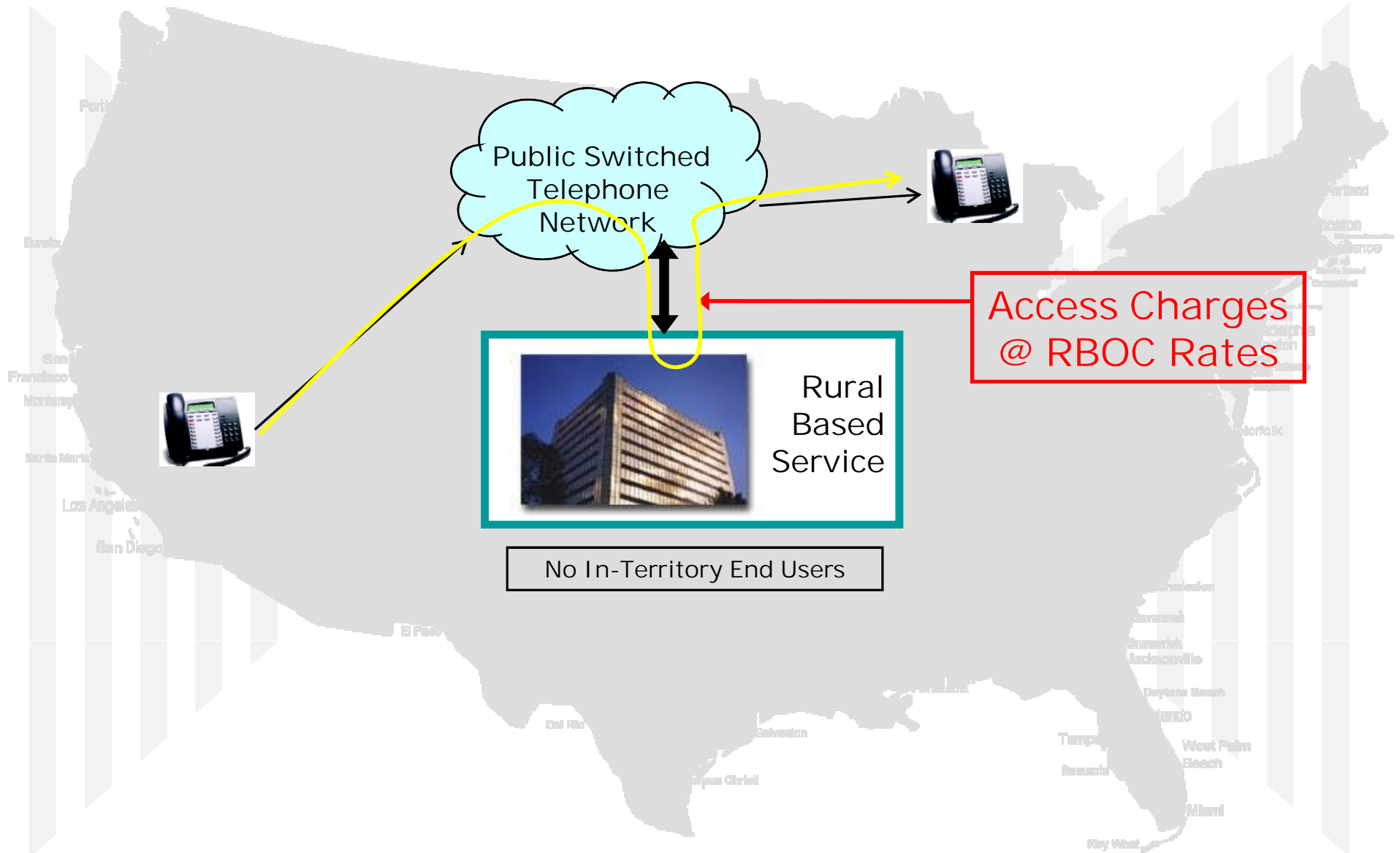
- Fully-mechanized relay services are not likely to qualify for Rural Access Charges (except when incidental to other services).
- Calling services marketed to end-users outside of the Rural LEC's territory are not likely to qualify for Rural Access Charges.
- A LEC that shares its Rural Access Charge revenue with an affiliate or a third-party must take measures to insure that its partner is in compliance with these rules (or simply levy RBOC access rates).
- A LEC offering free or heavily-discounted access (e.g., PRI or VoIP), expecting to recover costs via Rural Access Charges, must tariff that service to prohibit use counter to these rules (e.g., out of territory) and enforce accordingly. Alternatively, levy RBOC access charges.
- Calls must be presented to the network with ANI, CPN and related fields properly coded to reflect the actual usage. Carriers and their partners may not manipulate these fields to promote mis-application of access charges.
- If need be, consider a grievance mechanism at the FCC where one party can challenge the application of Rural Access Charges by another. The "loser" would pay an administrative fee to cover the FCC's costs.

# Use Case – Conference Calling / Chat

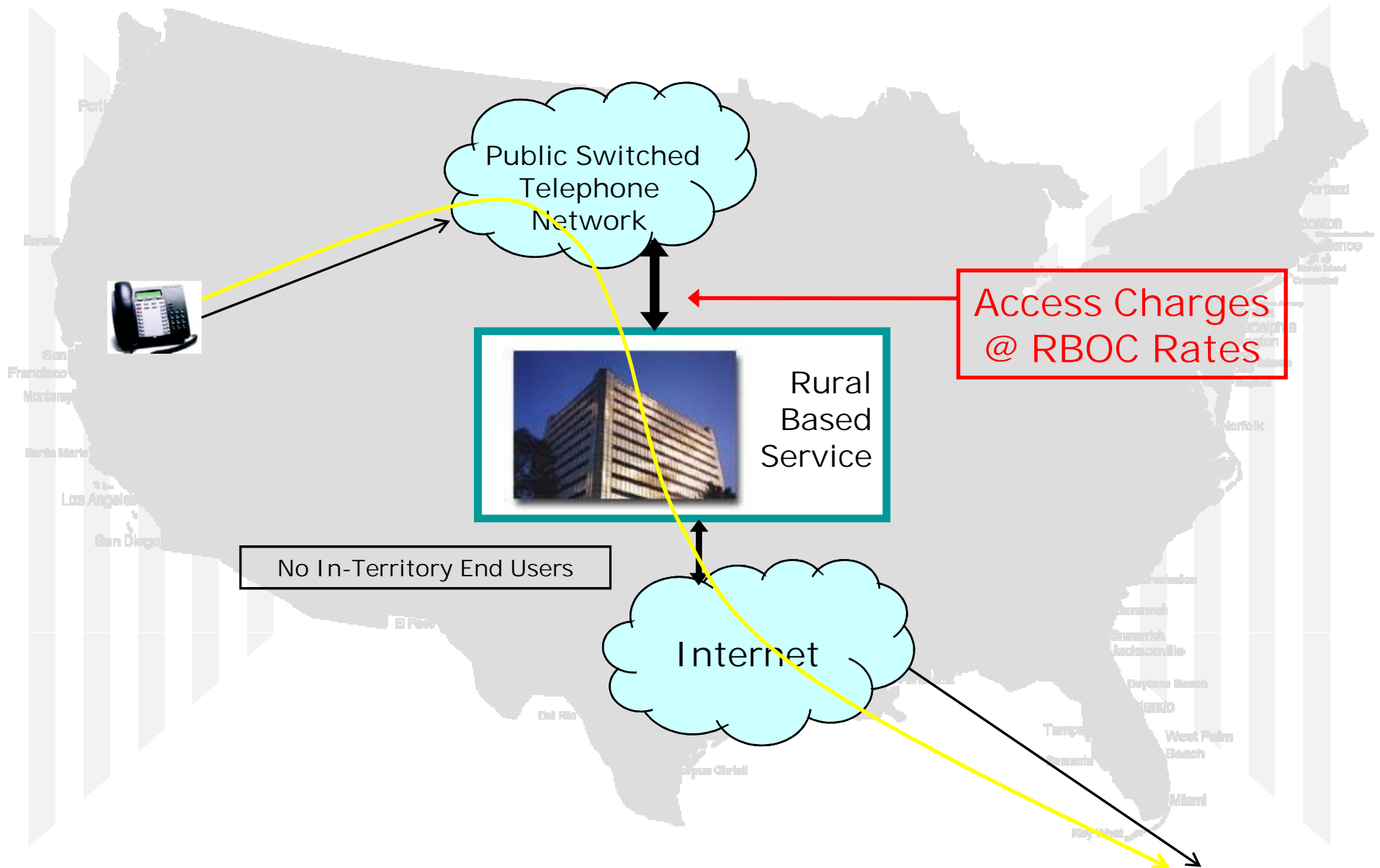




# Use Case – Call Recording

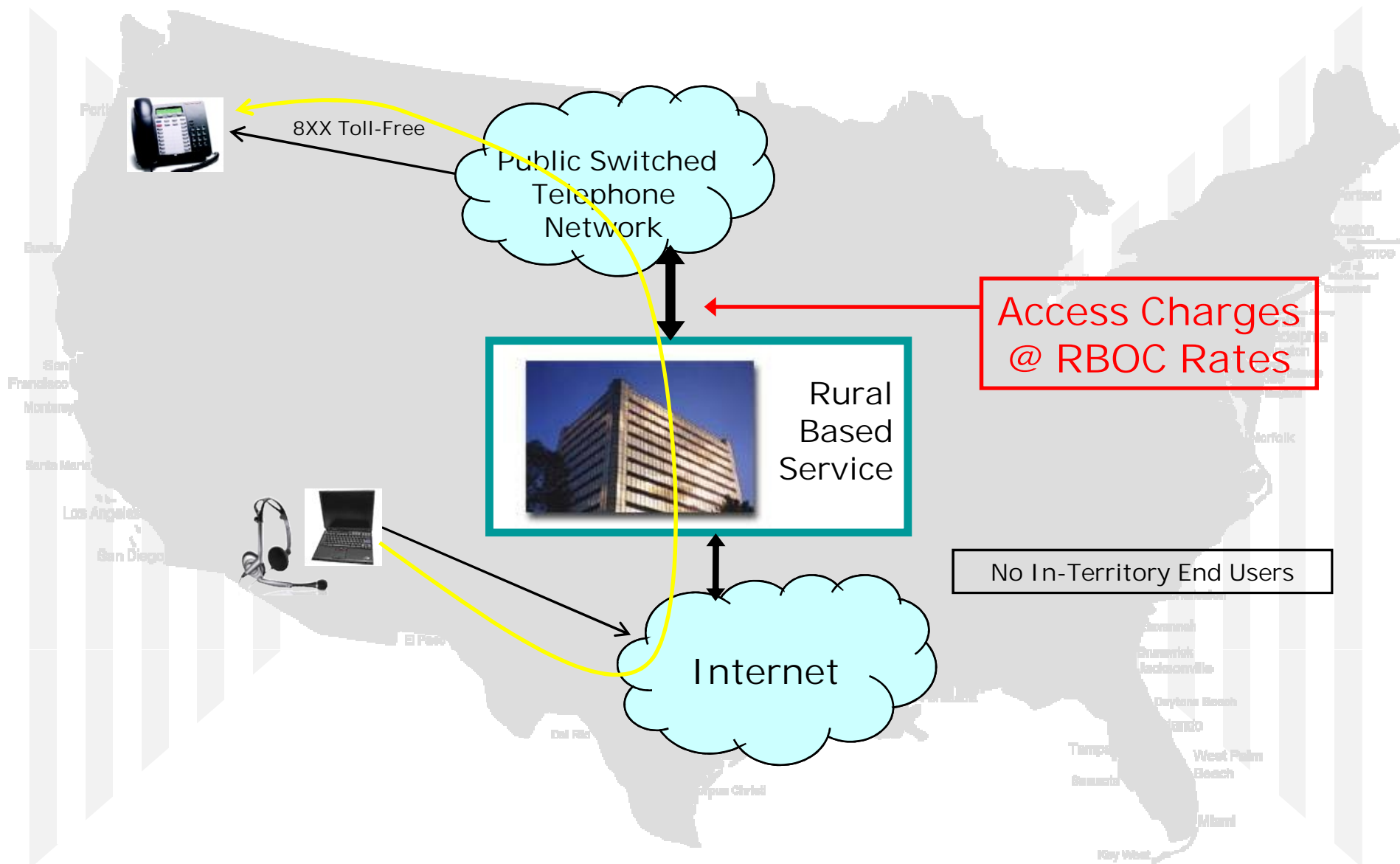


# Use Case – International Calling



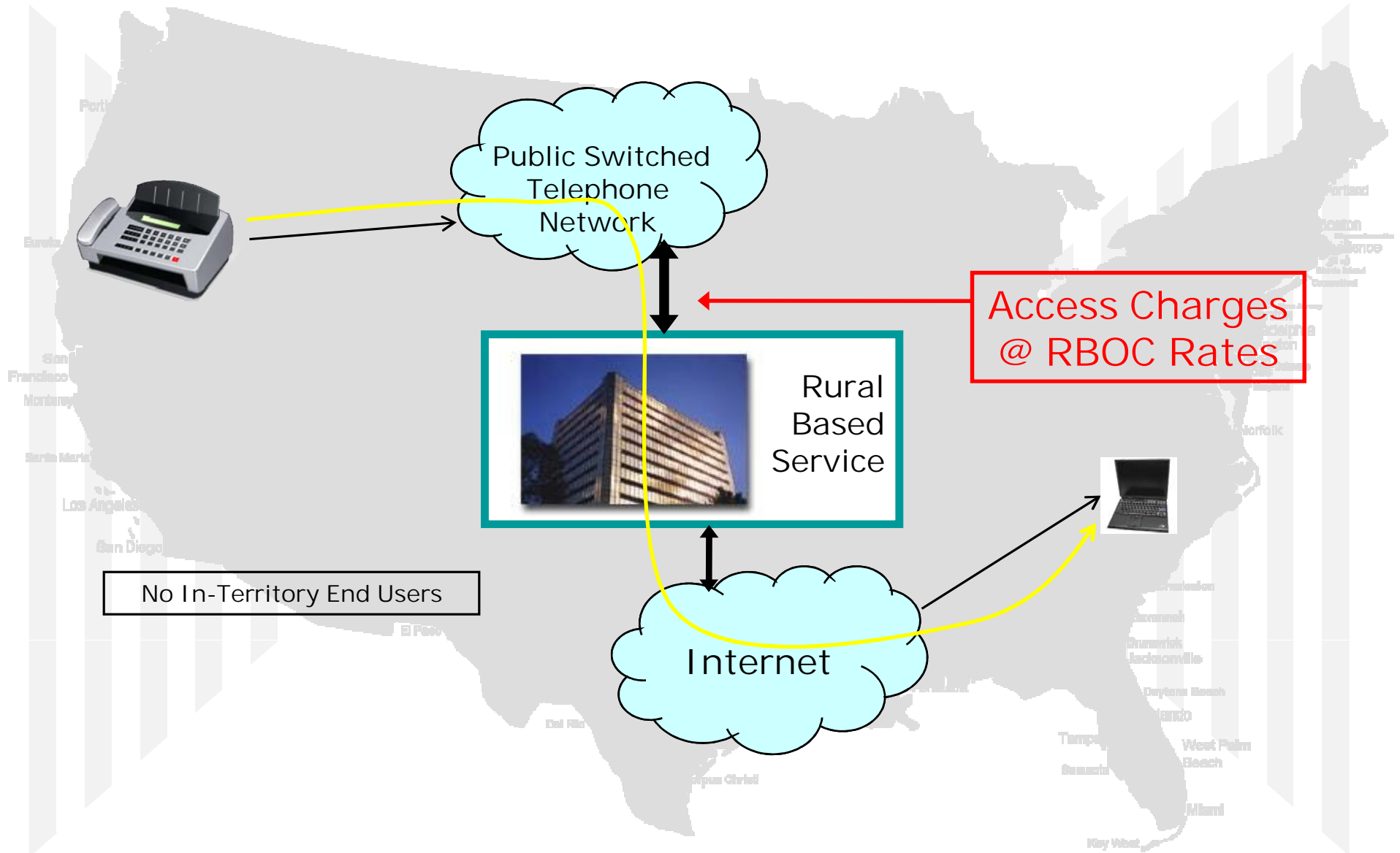


# Use Case – PC-to-Toll-Free



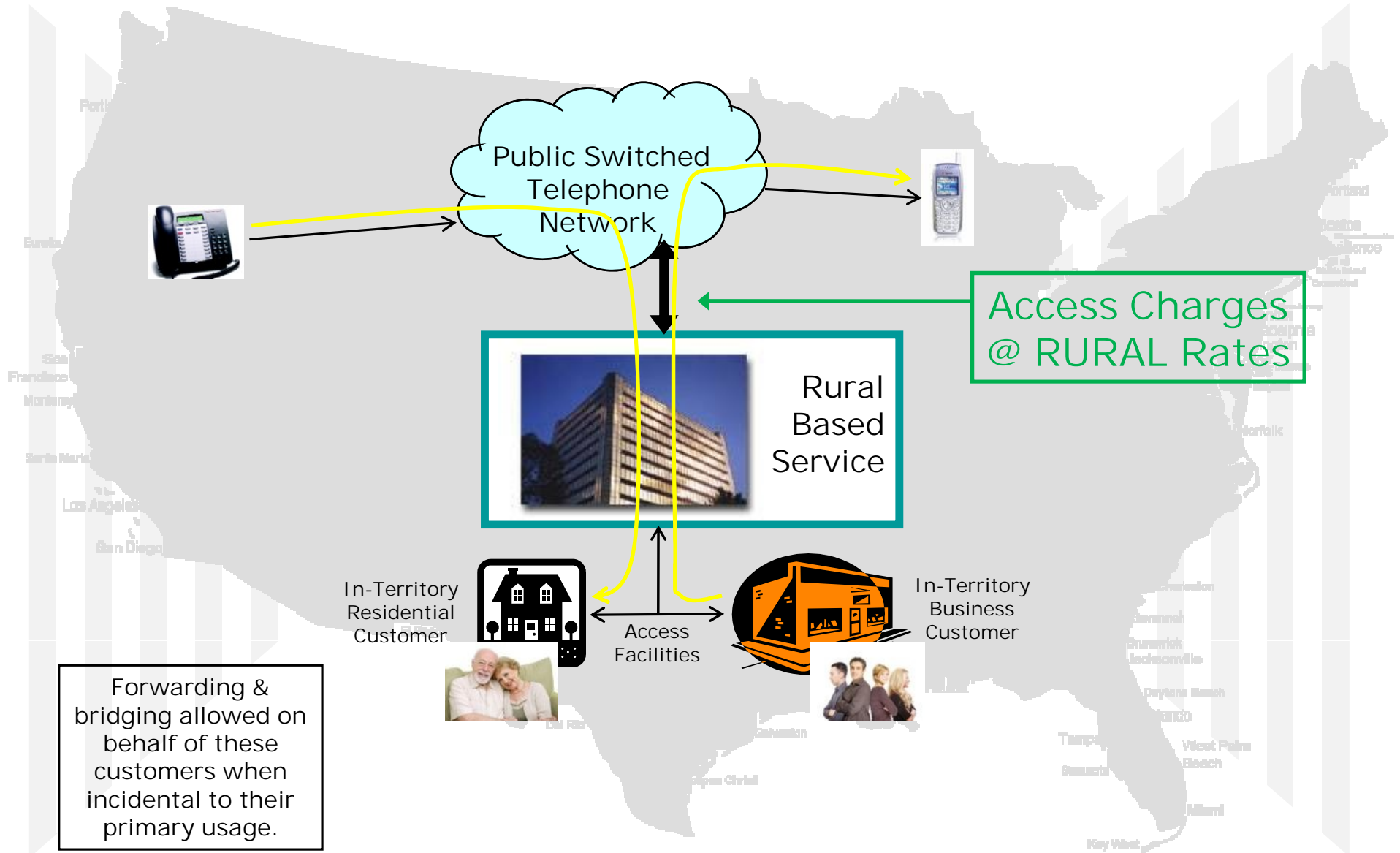


# Use Case – Fax-to-Email





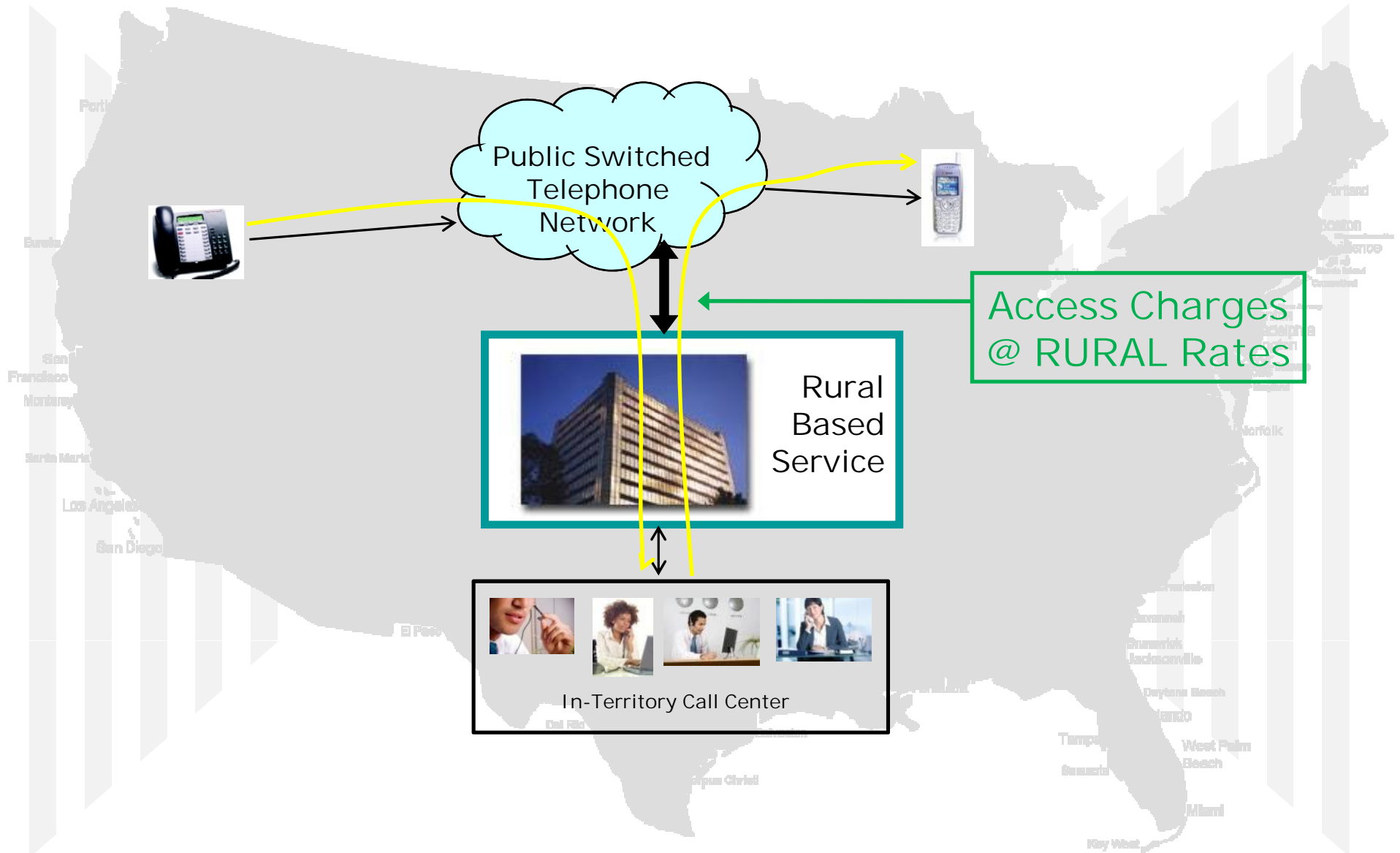
# Use Case – Local Access







# Use Case – Call Center





# Conclusions

- Traffic Pumping must cease
  - Prohibited by 254(k)
  - Unfair to those playing by the rules
  - Distorts the marketplace & drives inefficient behavior
- Our proposal:
  - Does not encumber legitimate collectors of rural access charges
  - Gives R-(C)LEC's freedom to structure creative business deals
  - Imposes no burden on those not abusing the system
  - Provides clear criteria for permitted use of rural access charges
  - Allows use of RBOC access rates for non-qualified services
- This approach:
  - Eliminates the 254(k) violation
  - Levels the playing field for all providers
  - Does not interfere with broader access charge reform
  - Can be implemented immediately